

ASSEMBLY BILL

No. 418

Introduced by Assembly Member Ammiano

February 14, 2011

An act relating to tidelands and submerged lands.

LEGISLATIVE COUNSEL'S DIGEST

AB 418, as introduced, Ammiano. Tidelands and submerged lands: City and County of San Francisco: Pier 70.

Existing law grants to the City and County of San Francisco the right, title, and interest of the State of California in and to certain tidelands and submerged lands in trust for certain purposes. Under existing law, the Burton Act, and the Burton Act transfer agreement, the interest of the state in and to the Harbor of San Francisco was transferred in trust to the City and County of San Francisco. The State Lands Commission has jurisdiction over tidelands and submerged lands of the state.

This bill would authorize the State Lands Commission to approve an exchange of trust lands within the Pier 70 area, as defined, subject to specified conditions. The bill would provide that lands exchanged out of the trust are free from the requirements of the public trust, the Burton Act trust, and the Burton Act transfer agreement, and lands to be exchanged are subject to the requirements of the public trust, the Burton Act trust, and the Burton Act transfer agreement.

The bill would provide that the precise boundaries of the lands to be taken out of the trust and the lands to be put into the trust pursuant to the exchange shall be determined by the Port of San Francisco, subject to the approval of the commission. All lands exchanged into the public trust shall be held by the Port of San Francisco.

This bill would make legislative findings and declarations as to the necessity of a special statute for Pier 70 in the City and County of San Francisco.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The following definitions apply for purposes of
2 this act:
- 3 (a) “BCDC” means the San Francisco Bay Conservation and
4 Development Commission established under Section 66620 of the
5 Government Code.
- 6 (b) “Burton Act” means Chapter 1333 of the Statutes of 1968,
7 as amended.
- 8 (c) “Burton Act transfer agreement” means that certain
9 agreement dated January 24, 1969, between the state and the city,
10 relating to the transfer of the Port of San Francisco from the state
11 to the city, and any amendments to that agreement in accordance
12 with its terms.
- 13 (d) “Burton Act trust” means the statutory trust imposed by the
14 Burton Act, and any additional restrictions on use and alienability
15 created by the Burton Act transfer agreement.
- 16 (e) “City” means the City and County of San Francisco, a charter
17 city and county, and includes the port.
- 18 (f) “Commission” means the State Lands Commission.
- 19 (g) “Master plan” means the Pier 70 Preferred Master Plan
20 published by the port in April 2010.
- 21 (h) “Pier 70 area” means the approximately 69-acre site owned
22 by the port commonly known as the Pier 70 area.
- 23 (i) “Port” means the Port of San Francisco, acting by and through
24 the San Francisco Port Commission.
- 25 (j) “Public trust” means the common law public trust for
26 commerce, navigation, and fisheries.
- 27 (k) “State” means the State of California.
- 28 (l) “Tidelands” means tide and submerged lands.
- 29 (m) “Trust” means the public trust or the Burton Act trust, or
30 both, as appropriate in the context of its use.
- 31 (n) “Trust lands” means all lands, including tide and submerged
32 lands, within the Pier 70 area that are presently subject to the trust.

1 Following a trust exchange, trust lands shall include all lands within
2 the Pier 70 area that have been impressed with the trust by the
3 exchange, and shall not include any lands that have been removed
4 from the trust by the exchange.

5 SEC. 2. The Legislature finds and declares all of the following:

6 (a) The purpose of this act is to facilitate the productive reuse
7 of the lands within the Pier 70 area of San Francisco in a manner
8 that furthers the purposes of the trust. To effectuate this purpose,
9 this act approves and authorizes the commission, subject to the
10 requirements of this act, to carry out an exchange of lands that will
11 place or confirm the public trust or the Burton Act trust on lands
12 within the Pier 70 area with substantial value for the trust, and
13 terminate the public trust and the Burton Act trust in Pier 70 area
14 lands that no longer are useful for trust purposes.

15 (b) The Pier 70 area is one of the most important intact industrial
16 complexes west of the Mississippi. Largely as a result of its
17 industrial past, portions of the Pier 70 area are contaminated with
18 hazardous substances. The Pier 70 area is within the jurisdiction
19 of the port. Preserving the Pier 70 area's historic resources is one
20 of the port's goals in its Waterfront Land Use Plan adopted in
21 1997. In furtherance of that goal, the port has prepared an
22 application to list the Pier 70 area on the National Register of
23 Historic Places and is working with applicable regulatory agencies
24 to prepare a plan to remediate, if necessary, any hazardous
25 substances affecting the Pier 70 area. The master plan incorporates
26 historic preservation and remediating environmental conditions
27 as key objectives for development of the Pier 70 area.

28 (c) The Pier 70 area includes lands that were historically
29 tidelands subject to the public trust as well as historic uplands that
30 were not subject to the public trust. Beginning in 1868, certain
31 Pier 70 area tidelands were conveyed into private ownership by
32 the state pursuant to various state statutes. Portions of those
33 tidelands were subsequently filled and reclaimed. The public trust
34 status of portions of the reclaimed tidelands is uncertain. Due to
35 various historical circumstances, some of the reclaimed tidelands,
36 including lands located well inland from the current shoreline,
37 may have remained subject to the public trust, while other
38 reclaimed tidelands, including lands adjacent to the shoreline, may
39 have been freed from the trust. The port acquired portions of the
40 Pier 70 area lands, including portions of the historic uplands, as

1 part of the state's grant to the city under the Burton Act. These
2 lands are subject to the Burton Act trust. The port acquired the
3 remainder of the Pier 70 area lands from private owners.

4 (d) Absent a trust exchange, substantial portions of the lands
5 within the Pier 70 area that are located along the waterfront or are
6 otherwise of high value to the trust could be sold into private
7 ownership, cut off from public access, and used for purposes
8 inconsistent with the trust. In addition, certain interior lands not
9 useful for trust purposes would be restricted by the trust and could
10 not be used for nontrust uses essential to the revitalization of the
11 Pier 70 area.

12 (e) This act is necessary for the successful revitalization of the
13 Pier 70 area and to realize the resulting public benefits, including
14 continued operation of the existing ship repair yard on
15 approximately 15 acres of the Pier 70 area, the elimination of
16 blight, the remediation of hazardous substances, the establishment
17 of a Pier 70 National Register Historic District and adaptive reuse
18 of approximately 700,000 square feet of historic buildings, the
19 construction of approximately 3,000,000 square feet of new infill
20 development compatible with the historic district predominantly
21 for job-creating uses such as office and technology space, providing
22 some 6,000 to 8,000 new jobs, the creation of approximately 11
23 acres of waterfront open space and an additional nine acres of
24 internal open space, and increased public access to the waterfront.
25 This legislation is also needed to improve the configuration of the
26 trust lands in furtherance of trust purposes.

27 (f) A trust exchange pursuant to this act would result in the
28 configuration of trust lands that maximizes the overall benefits to
29 the trust, without interfering with trust uses or purposes by
30 impressing the entire waterfront within the Pier 70 area, as well
31 as certain interior lands that have high trust values, with the public
32 trust and removing from the trust lands that have been cut off from
33 navigable waters, are no longer needed or required for the
34 promotion of the public trust, and constitute a relatively small
35 portion of the granted lands within the city. This act requires the
36 commission to ensure that the lands added to the trust by the
37 exchange have a monetary value equal to or greater than the
38 monetary value of the lands taken out of the trust.

39 (g) The State Office of Historic Preservation has reviewed the
40 port's draft nomination for national historic status of the Pier 70

1 area and has preliminarily concurred with the port's conclusion
2 that several historic buildings in the Pier 70 area are contributors
3 to the proposed Pier 70 Historic District. These contributor
4 buildings convey a sense of the Pier 70 area's early maritime
5 industrial history, enhance the open-space experience in the
6 corridor leading to the waterfront, and should be preserved and
7 restored. Uses of the contributor buildings that support their
8 preservation and restoration, but that are not otherwise consistent
9 with the trust, are authorized under this act.

10 (h) This act advances the statewide purpose of public trust and
11 is in the best interests of the people of this state.

12 SEC. 3. (a) The commission is authorized to approve an
13 exchange of trust lands within the Pier 70 area that meets the
14 requirements of this act.

15 (b) The commission may not approve the exchange of the trust
16 lands unless it finds all of the following:

17 (1) The portions of the trust lands or interests in lands to be
18 exchanged out of the trust have been filled and reclaimed, are cut
19 off from access to the waters of San Francisco Bay, and are no
20 longer in fact tidelands or submerged lands or navigable waterways,
21 are relatively useless for public trust purposes, and constitute a
22 relatively small portion of the granted lands within the city.

23 (2) The lands or interests in lands to be impressed with the trust
24 have a monetary value equal to or greater than the monetary value
25 of the lands or interests in lands to be exchanged out of the trust.
26 In the event that the monetary value of the lands or interests in
27 lands to be exchanged out of the trust is greater than the monetary
28 value of the lands or interests in lands to be exchanged into the
29 trust, the commission may consider a deposit of funds into the
30 Land Bank Fund established pursuant to Section 8610 of the Public
31 Resources Code to be held solely for acquisition of property, in
32 an amount equal to the difference in value.

33 (3) No substantial interference with trust uses and purposes,
34 including public rights of navigation and fishing, will ensue by
35 virtue of the exchange.

36 (4) The lands or interests in lands impressed with the trust will
37 provide a significant benefit to the trust and are useful for the
38 particular trust purposes authorized by this act.

1 (5) The configuration of trust lands within the Pier 70 area, upon
2 completion of the exchange, consists solely of lands suitable to be
3 impressed with the trust.

4 (6) Applicable state agencies have approved a risk management
5 plan, a remedial action plan, or other regulatory documents specific
6 to the conditions at the Pier 70 area containing standards sufficient
7 to protect human health and the environment from hazardous
8 substances in the Pier 70 area, the port is in compliance with the
9 approved plan, and the port has provided adequate financial
10 assurances to ensure continuing compliance with the plan.

11 (7) The final layout of streets in the Pier 70 area shall provide
12 access to the trust lands and be consistent with the beneficial use
13 of the trust lands.

14 (8) Streets and other transportation facilities located on trust
15 lands shall be designed to be compatible with the trust and to serve
16 primarily trust purposes of access to shoreline improvements and
17 shoreline circulation rather than serving nontrust purposes.

18 (9) The San Francisco Port Commission and the city's board of
19 supervisors have approved the exchange.

20 (10) Any surveys or legal descriptions required for the parcels
21 in conjunction with the exchange shall be approved by the
22 commission.

23 (11) The exchange otherwise complies with the requirements
24 of this act.

25 (12) The exchange is consistent with and furthers the purpose
26 of the public trust, the Burton Act trust, and this act.

27 (13) The exchange is otherwise in the best interest of the
28 statewide public.

29 (14) The commission may impose additional conditions on the
30 exchange authorized by this act if the commission determines that
31 these conditions are necessary to protect the public trust.

32 (c) For purposes of effectuating the exchange authorized by this
33 section, the commission is authorized to do all of the following:

34 (1) Receive and accept on behalf of the state any lands or interest
35 in lands conveyed to the state by the parties to the exchange
36 agreement, including lands that are now and will remain subject
37 to the public trust and the Burton Act trust.

38 (2) Convey by patent all of the right, title, and interest of the
39 state in lands that are to be free of the public trust upon completion

1 of an exchange of lands as authorized by this act and as approved
2 by the commission.

3 (3) Convey to the city by patent all of the right, title, and interest
4 of the state in lands that are to be subject to the public trust and
5 the Burton Act trust upon completion of an exchange of lands as
6 authorized by this act and as approved by the commission, subject
7 to the terms, conditions, and reservations as the commission may
8 determine are necessary to meet the requirements of this act.

9 (d) The exchange authorized by this section may include lands
10 adjacent to the Pier 70 area to the extent consistent with the
11 purposes of this act and approved by the commission. Lands
12 outside the Pier 70 area that are impressed with the public trust
13 and the Burton Act trust as part of an exchange authorized by this
14 act shall be deemed trust lands for purposes of this act.

15 (e) This act does condition or otherwise limit the authority of
16 the state or the city to undertake a trust exchange or other
17 conveyance authorized by any other law.

18 SEC. 4. The precise boundaries of the lands to be taken out of
19 the trust and the lands to be put into the trust pursuant to the
20 exchange shall be determined by the port, subject to the approval
21 of the commission. The commission is authorized to settle by
22 agreement with the port any disputes as to the location of the mean
23 high tide line in its last natural state, the boundaries of tidelands
24 conveyed into private ownership pursuant to various statutes, and
25 any other boundary lines that the commission deems necessary to
26 effectuate the exchange.

27 SEC. 5. All lands exchanged into the trust under this act shall
28 be held by the port subject to the public trust and the Burton Act
29 trust, and all lands exchanged out of the trust under this section
30 shall be free of the public trust and the Burton Act trust.

31 SEC. 6. An exchange or other agreement made under this act
32 is hereby found to be of statewide significance and importance.
33 Therefore, an ordinance, charter provision, or other provision of
34 local law that is inconsistent with this act does not apply to that
35 exchange or agreement.

36 SEC. 7. (a) Notwithstanding any other law, the requirements
37 of subdivision (f) of Section 10310 of Title 14 of the California
38 Code of Regulations shall be deemed satisfied for any Pier 70
39 development project requiring a BCDC permit if the city submits
40 in a form acceptable to BCDC an approved development and

1 disposition agreement for the project and city final approval of all
2 necessary amendments to the city's general plan, planning code,
3 and zoning maps.

4 (b) This section does not affect BCDC's jurisdiction and
5 authority or its discretion to approve, disapprove, or condition a
6 permit application subject to this section in accordance with
7 applicable law.

8 SEC. 8. A deed, patent, agreement, or other instrument executed
9 in furtherance of this act, or an action of the state or port to approve
10 the use, lease, or conveyance of a state or port property subject to
11 this act, or any portion of that property, or to approve project
12 agreements, grant entitlements, or permits, or issue bonds or other
13 indebtedness in connection with the use and development of that
14 property, shall be conclusively presumed to be valid unless held
15 to be invalid in an appropriate proceeding in a court of competent
16 jurisdiction to determine the validity of the agreement commenced
17 within 60 days after the recording of the agreement.

18 SEC. 9. (a) An action may be brought under Chapter 4
19 (commencing with Section 760.010) of Title 10 of Part 2 of the
20 Code of Civil Procedure to establish title to any lands conveyed
21 pursuant to this act or by the parties to any agreement entered into
22 pursuant to this act to confirm the validity of the agreement.
23 Notwithstanding Section 764.080 of the Code of Civil Procedure,
24 the statement of decision in the action shall include a recitation of
25 the underlying facts and a determination as to whether the
26 conveyance or agreement meets the requirements of this act,
27 Sections 3 and 4 of Article X of the California Constitution, if
28 applicable, and any other law applicable to the validity of the
29 agreement.

30 (b) For purposes of Section 764.080 of the Code of Civil
31 Procedure and unless otherwise agreed in writing, an agreement
32 entered into pursuant to this act shall be deemed to be entered into
33 on the date it is executed by the executive officer of the
34 commission, who shall be the last of the parties to sign prior to the
35 signature of the Governor. The effective date of the agreement
36 shall be deemed to be the date on which it is executed by the
37 Governor pursuant to Section 6107 of the Public Resources Code.

38 (c) An action may be brought under Chapter 9 (commencing
39 with Section 860) of Title 10 of Part 2 of the Code of Civil
40 Procedure to determine the legality and validity of a deed, patent,

1 agreement, or other instrument executed in furtherance of or
2 authorized by this act, or an action of the port to use, lease, or
3 convey any property, or to approve project agreements, grant
4 entitlements or permits, or issue bonds or other indebtedness in
5 connection with the use and development of that property. Prior
6 to the filing of an action, the Attorney General and the executive
7 officer of the commission shall be provided written notice of the
8 action and a copy of the complaint. An action authorized by this
9 subdivision may be combined with an action authorized by
10 subdivision (a).

11 SEC. 10. If a provision of this act, or its application to a person,
12 property, or circumstance, is held invalid by a court, the invalidity
13 or inapplicability of that provision shall not affect any other
14 provision of this act or the application of that provision to any
15 other person, property, or circumstance, and the remaining portions
16 of this act shall continue in full force and effect, unless enforcement
17 of this act as so modified by and in response to that invalidation
18 would be grossly inequitable under all of the circumstances, or
19 would frustrate the fundamental purposes of this act.

20 SEC. 11. The Legislature finds and declares that a special law
21 is necessary and that a general law cannot be made applicable
22 within the meaning of Section 16 of Article IV of the California
23 Constitution because of the unique circumstances applicable only
24 to the lands described in this act.